

ARKANSAS SUPREME COURT

No. CACR 01-106

NOT DESIGNATED FOR PUBLICATION

JOHN RAGSDALE
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered November 16, 2006

PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A PETITION
FOR WRIT OF ERROR *CORAM NOBIS*
[CIRCUIT COURT OF MILLER
COUNTY, CR 99-527]

PETITION DENIED.

PER CURIAM

In 2000, a jury found petitioner John Ragsdale guilty of possession of methamphetamine with intent to deliver and sentenced him to 480 months' imprisonment in the Arkansas Department of Correction. The Arkansas Court of Appeals affirmed the judgment. *Ragsdale v. State*, CACR 01-106 (Ark. App. Sept. 5, 2001). Petitioner timely filed in the trial court a petition for postconviction relief under Ark. R. Crim. P. 37.1, which was denied. This court affirmed. *Ragsdale v. State*, CR 01-1399 (Ark. May 23, 2002) (*per curiam*). Petitioner next sought an original action in this court pursuant to Ark. R. Civ. P. 60. We declined petitioner's invitation to create a new postconviction remedy. *Ragsdale v. State*, CR 06-532 (Ark. June 22, 2006) (*per curiam*).

Proceeding *pro se*, petitioner now requests this court to reinvest jurisdiction in the trial court to consider a petition for writ of error *coram nobis*.¹ The petition for leave to proceed in the trial

¹For clerical purposes, the instant petition to reinvest jurisdiction in the trial court to consider a petition for writ of error *coram nobis* was assigned the same docket number as the direct appeal

court is necessary because the circuit court can entertain a petition for writ of error *coram nobis* after a judgment has been affirmed on appeal only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (*per curiam*).

Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984), citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975). A writ of error *coram nobis* is an extraordinarily rare remedy, more known for its denial than its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). The function of the writ is to secure relief from a judgment rendered while there existed some fact which would have prevented its rendition if it had been known to the trial court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004).

The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (*per curiam*). We have held that a writ of error *coram nobis* was available to address certain errors that are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, or a third-party confession to the crime during the time between conviction and appeal. *Pitts*, 336 Ark. at 583, 986 S.W.2d at 409.

Petitioner asserts that the trial court should be reinvested with jurisdiction to consider a petition for the writ because the prosecution withheld a statement by his accomplice, Clara Stockton.

of the judgment.

However, even if petitioner's claim should fall within one of the four recognized categories, his claim is not one that is appropriate for relief under a *coram nobis* proceeding. Petitioner has failed to exercise diligence in pursuing *coram nobis* relief as to this claim, and we accordingly must decline to reinvest jurisdiction in the trial court.

There is no specific time limit for seeking a writ of error *coram nobis*, but due diligence is required in making an application for relief and in the absence of a valid excuse for delay, the petition will be denied. *Echols v. State*, 360 Ark. 332, ___ S.W.3d ___ (2005). Due diligence requires that 1) the defendant be unaware of the fact at the time of trial; 2) he could not have, in the exercise of due diligence, presented the fact at trial; or 3) upon discovering the fact, did not delay bringing the petition. *Id.*

Petitioner was aware of the facts asserted in his claim at trial. He states that Clara Stockton admitted in her testimony at trial that she had provided the statement to the police and only later changed her story. If petitioner did not do so, he clearly could have presented the fact of the withheld statement at trial. Petitioner has asserted no good cause for failure to bring the petition more than six years after discovering the facts asserted here. Accordingly, we decline to reinvest the trial court with jurisdiction to consider the petition for writ of error *coram nobis*.

Petition denied.

Glaze, J., not participating.